

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TANYA S. COLEMAN,

Plaintiff,

V.

**MICHAEL ASTRUE,**  
Commissioner of Social Security,

Defendant.

Case No. C07-5406FDB

# REPORT AND RECOMMENDATION

Noted for May 16, 2008

This matter has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Magistrate Rule MJR 4(a)(4) and as authorized by Mathews, Secretary of H.E.W. v. Weber, 423 U.S. 261 (1976). This matter has been briefed by the parties. The undersigned now submits the following report, recommending that the Court affirm the administrative decision to deny plaintiff social security benefits.

## INTRODUCTION

Plaintiff, Tanya Coleman, was born in 1965. She completed the 10<sup>th</sup> grade. She has lived on her own since she was 16 or 17 years old, when she left school, her foster home and began working. However, she has very little past work experience. She last worked, for only one month, as a fast-food service attendant from July to August 2003.

Plaintiff filed an application for supplemental security income benefits on October 30, 2003. She alleged disability since August 15, 2003, and states she is unable to work due to "a whole lot of pain

1 constantly. I have some social defects and I have pain constantly" (Tr. 951).

2 The application was denied initially and on reconsideration. Ms. Coleman timely requested a  
 3 hearing before an Administrative Law Judge, and a hearing was held on December 21, 2006. At the  
 4 hearing, Ms. Coleman amended her onset date of disability to October 30, 2003, the date of her  
 5 application.

6 The ALJ issued an unfavorable decision on February 22, 2007 (Tr. 13-30). Plaintiff filed a  
 7 Request for Review with the Appeals Council. On June 22, 2007, the Appeals Council issued its Notice  
 8 of Appeals Council Action, denying the Request for Review, making the ALJ's decision the  
 9 administration's final determination.

10 Plaintiff now brings the instant action pursuant to 205(g) of the Social Security Act ("the Act"), as  
 11 amended, 42 U.S.C. § 405(g), to obtain judicial review of the final decision denying plaintiff's application  
 12 for benefits. Specifically, Plaintiff contends ALJ erred when he discredited Plaintiff's allegations and  
 13 statements regarding the severity of her impairments. Plaintiff further argues the ALJ's residual  
 14 functional capacity ("RFC") is erroneous because it does not properly reflect Plaintiff's allegations.  
 15 Defendant counter-argues that the ALJ applied the proper legal standards and his findings are properly  
 16 supported by substantial evidence in the record.

### 17 DISCUSSION

18 The Commissioner's decision must be upheld if the ALJ applied the proper legal standard and the  
 19 decision is supported by substantial evidence in the record. Drouin v. Sullivan, 966 F.2d 1255, 1257 (9<sup>th</sup>  
 20 Cir. 1992); Hoffman v. Heckler, 785 F.2d 1423, 1425 (9<sup>th</sup> Cir. 1986). Substantial evidence is such  
 21 relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v.  
 22 Perales, 402 U.S. 389, 401 (1971); Fife v. Heckler, 767 F.2d 1427, 1429 (9<sup>th</sup> Cir. 1985). It is more than a  
 23 scintilla but less than a preponderance. Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9<sup>th</sup> Cir.  
 24 1975); Carr v. Sullivan, 772 F. Supp. 522, 525 (E.D. Wash. 1991). If the evidence admits of more than  
 25 one rational interpretation, this Court must uphold the Commissioner's decision. Allen v. Heckler, 749  
 26 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).

27 Bunnell v. Sullivan, 947 F.2d 341 (9th Cir. 1991) (*en banc*), is controlling Ninth Circuit authority  
 28 on evaluating plaintiff's subjective complaints. Bunnell requires the ALJ findings to be properly

1 supported by the record, and "must be sufficiently specific to allow a reviewing court to conclude the  
 2 adjudicator rejected the claimant's testimony on permissible grounds and did not 'arbitrarily discredit a  
 3 claimant's testimony regarding pain.'" Id. at 345-46 (quoting Elam v. Railroad Retirement Bd., 921 F.2d  
 4 1210, 1215 (11th Cir. 1991)). An ALJ may reject a claimant's subjective complaints, if the claimant is  
 5 able to perform household chores and other activities that involve many of the same physical tasks as a  
 6 particular type of job. Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989) However, as further explained in  
 7 Fair v. Bowen, *supra*, and Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996), the Social Security Act  
 8 does not require that claimants be utterly incapacitated to be eligible for benefits, and many home  
 9 activities may not be easily transferrable to a work environment where it might be impossible to rest  
 10 periodically.

11 Here, the ALJ discussed Plaintiff's credibility after first summarizing and reviewing the medical  
 12 evidence, in the context of her residual functional capacity. The ALJ wrote:

13 The claimant alleges debilitating pain of a chronic nature. She testified that she can sit a  
 14 maximum of ten minutes and stand a maximum of 20 minutes. Due to pain, she stated  
 15 that she requires four to five periods of recumbency during the work hours. The claimant's  
 16 conditions can give rise to pain (SSR 94-3p). However, the record does not support the  
 17 level of limitation alleged by the claimant. Her primary care provider, ARNP West,  
 limited the claimant to work at the sedentary exertional level, as did the State agency  
 medical consultants who assessed the nature and severity of her condition. No opinion of  
 record, either treating or examining, supports the claimant's allegation of debilitating pain.  
 The claimant is not credible in her assertions.

18 Consideration has also been given to a Disability Report completed by the claimant  
 19 wherein she stated that she spent her day caring for her infant daughter, including feeding  
 20 her, changing her, trying to occupy her with television and books and "other quite  
 21 unexertful things." The claimant stated that she occasionally became grouchy or upset  
 22 when others could do things she could not because of her back pain. She stated that she  
 23 sometimes required help getting in and out of the tub or with getting her child in and out of  
 24 the tub. She said she prepared all the meals, three times per day, and also performed  
 25 laundry and washed the dishes, though she needed help lifting, vacuuming and mopping.  
 She spent half an hour per day reading, or until her neck began to hurt. She said she could  
 not perform any hobbies except going to church, and that she went to church weekly  
 because the church van picked her up (Ex. 1E). The claimant completed a Pain  
 Questionnaire in January 2004 wherein she stated that she experienced pain if she stood  
 too long, that stretching caused spasms, and bending or sitting too long caused pain in her  
 legs and back. She said she could not get pain medication because she had no medical  
 coverage (Ex. 5E). These statements are not particularly probative as they were completed  
 prior to the claimant beginning care with ARNP West and starting effective medications.

26 In assessing the claimant's credibility regarding her alleged limitations, I note that the  
 27 extent of her assertions is not supported by the objective medical evidence of record.  
 28 ARNP West, the claimant's primary care provider, noted repeatedly that when she took  
 methadone she was "functional" and "productive" (Ex. 11F). The claimant was noted to  
 be a caretaker not only for her toddler daughter, but also for her ill husband. In fact, she reported that she

1 was doing "everything" around the house. The claimant reported that she was able to perform household  
 2 chores and run errands. ARNP West's notes indicate consistently that the claimant's pain was tolerable  
 3 and she engaged [and] I note also the claimant's reports to Mr. Stagg, her therapist, in March 2006 that  
 4 she enjoyed spending time outdoors with her daughter (Ex. 12F/6). The evidence shows that the claimant  
 5 engaged in a normal level of daily activities when compliant with her medication; she also noted that the  
 6 claimant's symptoms of depression and anxiety were well controlled by medication; the records indicate  
 7 that the claimant experienced increased symptoms when she decided to stop taking her medications, and  
 8 that she reported increased depression and anxiety when dealing with relational stressors.

9  
 10 Also bearing on the claimant's credibility is the fact that she was not compliant with  
 11 treatment recommendations. ARNP West noted that the claimant did not follow up with  
 12 orthopedist Dr. McGovern and the hand therapy he recommended, or with  
 13 gastroenterologist Dr. You regarding her hepatitis C (Ex. 11F). In addition, the claimant  
 14 was discharged from services at Peninsula Mental Health for her failure to participate; ms  
 15 Johnson noted that the claimant attended only one therapy session in six months and Mr.  
 16 Stagg also noted multiple cancellations and no-shows due to her chronic respiratory  
 17 ailments, advice she failed to follow. One would expect the claimant to follow through  
 18 with treatment recommendations made by health care providers if her impairments were as  
 19 debilitating as she alleges. She was obviously able to attend appointments with ARNP  
 20 West, and to go to the emergency room; she would have been able to exert the same effort  
 21 with other specialists and mental health providers. Finally, the claimant's poor work  
 22 history does not bolster her credibility. She has not engaged in work at the level of  
 23 substantial gainful activity in the last 15 years, many of which precede her alleged onset  
 24 date of disability. Her poor work history raises the question of whether her alleged  
 25 inability to work is due to her impairments or to a lack of motivation. For the above  
 26 reasons, I do not find the claimant credible as to her alleged limitations. Moreover, none  
 27 of the opinions of record support the claimant's contentions.

28 (Tr. 26-27).

1 The undersigned finds the ALJ gave several legitimate reasons to discredit Plaintiff's alleged  
 2 sitting and standing limitations and need to lie down for 4 to 5 hours a day. As noted above, these reasons  
 3 included the medical opinions of record, Plaintiff's improvement with methadone, her daily activities,  
 4 noncompliance with treatment recommendations, and a poor work history. The record supports the ALJ  
 5 interpretation. For example, ARNP West's notes clearly show that Plaintiff responded very well to  
 6 methadone treatment over a significant period of time (Tr. 766, 813, 809, 807, 805, 803, 801, 799, 797,  
 7 795, 830, and 827). Ms. West also stated that Plaintiff could perform sedentary work, with certain  
 8 limitations on standing and sitting for prolonged periods (Tr. 701, 707, 934). The ALJ's decision is  
 9 further supported by the State agency reviewing physicians, who also indicated Plaintiff could perform  
 10 sedentary work. Tr. 149, 155.

11 After reviewing the record, the undersigned finds the ALJ properly discounted Plaintiff's  
 12 testimony regarding the severity of her impairments. Accordingly, the undersigned also finds no error in  
 13 the ALJ evaluation of Plaintiff residual capacity to perform certain types of sedentary work, i.e., an  
 14

1 assembler, addresser, or document preparer.

2 **CONCLUSION**

3 Based on the foregoing discussion, the Court should AFFIRM the administrative decision.

4 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall  
5 have ten (10) days from service of this Report to file written objections. *See also* Fed.R.Civ.P. 6. Failure  
6 to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474  
7 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the  
8 matter for consideration on **May 16, 2008**, as noted in the caption.

9 DATED this 25th day of April, 2008.

10 /s/ J. Kelley Arnold  
11 J. Kelley Arnold  
12 U.S. Magistrate Judge

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